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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PATRICK BICKHAM, an individual

Plaintiff,

v.

VULCAN MATERIALS COMPANY, a
New Jersey corporation; and DOES 1
through 25; inclusive,

Defendants.

CASE NO. 2:19-cv-00981 AB (FFMx)

[Los Angeles Superior Court Case No.
18STCV09908]

**~~[PROPOSED]~~ ORDER RE
STIPULATED PROTECTIVE ORDER**

Action Filed: December 26, 2018

Action Removed: February 8, 2019

Trial Date: June 23, 2020

[PROPOSED] ORDER

Pursuant to the stipulation by the good cause appearing, the Court HEREBY ENTERS the Parties' Stipulated Protective Order as follows:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 11.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1.1. GOOD CAUSE STATEMENT

The discovery obtained in the above-captioned action may involve disclosure of non-public, confidential, proprietary, commercially sensitive, and/or trade secret information. Disclosure of this information to persons who are not entitled to it carries the danger of compromising the competitive business interests of Defendant and also risks invasion of the legitimate personal privacy interests of Plaintiff and Non-Parties.

Defendant anticipates that it may need to produce material that contains proprietary information concerning its business practices and procedures for the operation of its facilities that may be of value to a competitor or may cause harm to its legitimate business interests in the marketplace. Defendant further anticipates that it

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1 may need to produce non-public information concerning Plaintiff or Non-Parties that
2 is personal in nature and/or protected by the right of privacy.

3 The issuance of this Protective Order will allow for efficiency in the discovery
4 process and provide a mechanism by which discovery of relevant confidential
5 information may be obtained in a manner that protects against risk of disclosure or such
6 information to persons not entitled to such information. Further, the issuance of this
7 Protective Order will protect the Parties' interests by providing the Parties recourse in
8 this Court in the event that a Party or Non-Party improperly handles non-public,
9 confidential, proprietary, commercially sensitive, and/or trade secret information that
10 the parties have had to exchange in the course of discovery propounded and depositions
11 taken in this action.

12
13 **2. DEFINITIONS**

14 2.1 Action: This pending federal lawsuit, *Patrick Bickham v. Vulcan Materials*
15 *Company, et al.*; Case No. 2:19-cv-00981-AB-(FFMx).

16 2.2 Challenging Party: A Party or Non-Party that challenges the designation
17 of information or items under this Order.

18 2.3 "CONFIDENTIAL" Information or Items: Information (regardless of how
19 it is generated, stored or maintained) or tangible things that qualify for protection under
20 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
21 Statement. "CONFIDENTIAL" Information or Items include:

22 (a) Non-public information about Plaintiff or any other individuals, including
23 personnel records, compensation and benefits information, medical information, or
24 other personal and confidential information;

25 (b) Information that is a "trade secret" as that term is defined in 18 U.S.C. §
26 1839;

27 (c) Defendant's policies and procedures for operating its facilities;

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1 (d) Organizational charts, business plans, models, financial statements, or
2 other sensitive business information;

3 (e) Information that is protected against disclosure by a written confidentiality
4 agreement between a third party and Plaintiff or Defendant;

5 (f) Personal or private information about Non-Parties; and/or

6 (d) Information alleged in good faith by a Party to be subject to protection
7 under the Federal Rules of Evidence and/or information that is confidential, of
8 commercial value.

9 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as
10 their support staff).

11 2.5 Designating Party: A Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL.”

14 2.6 Disclosure or Discovery Material: All items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including, among
16 other things, testimony, transcripts, and tangible things), that are produced or generated
17 in disclosures or responses to discovery in this matter.

18 2.7 Expert: A person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

21 2.8 In-House Counsel: Attorneys who are employees of a Party to this Action.
22 In-House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: Any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

26 2.10 Outside Counsel of Record: Attorneys who are not employees of a party
27 to this Action but are retained to represent or advise a party to this Action and have
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1 appeared in this Action on behalf of that party or are affiliated with a law firm which
2 has appeared on behalf of that party, and includes support staff.

3 2.11 Party: Any party to this Action, including all of its officers, directors,
4 employees, consultants, Experts, and Outside Counsel of Record (and their support
5 staffs).

6 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: Persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.

12 2.14 Protected Material: Any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16
17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only Protected
19 Material (as defined above), but also (1) any information copied or extracted from
20 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
21 Material; and (3) any testimony, conversations, or presentations by Parties or their
22 Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the trial
24 judge. This Order does not govern the use of Protected Material at trial.

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26 **4. DURATION**

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees otherwise

1 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
2 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
3 and (2) final judgment herein after the completion and exhaustion of all appeals,
4 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
5 any motions or applications for extension of time pursuant to applicable law.

6
7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

9 Each Party or Non-Party that designates information or items for protection under this
10 Order must take care to limit any such designation to specific material that qualifies
11 under the appropriate standards. The Designating Party must designate for protection
12 only those parts of material, documents, items, or oral or written communications that
13 qualify so that other portions of the material, documents, items, or communications for
14 which protection is not warranted are not swept unjustifiably within the ambit of this
15 Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that
17 are shown to be clearly unjustified or that have been made for an improper purpose
18 (e.g., to unnecessarily encumber the case development process or to impose
19 unnecessary expenses and burdens on other parties) may expose the Designating Party
20 to sanctions.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
26 or ordered, Disclosure of Discovery Material that qualifies for protection under this
27 Order must be clearly so designated before the material is disclosed or produced.

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1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents,
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL
5 legend”), to each page that contains protected material. If only a portion or portions of
6 the material on a page qualifies for protection, the Producing Party also must clearly
7 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for inspection
9 need not designate them for protection until after the inspecting Party has indicated
10 which documents it would like copied and produced. During the inspection and before
11 the designation, all of the material made available for inspection shall be deemed
12 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
13 copied and produced, the Producing Party must determine which documents, or portions
14 thereof, qualify for protection under this Order. Then, before producing the specified
15 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
16 that contains Protected Material. If only a portion or portions of the material on a page
17 qualifies for protection, the Producing Party also must clearly identify the protected
18 portion(s) (e.g., by making appropriate markings in the margins).

19 (b) for information produced in some form other than documentary form and for
20 any other tangible items, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information is stored the legend
22 “CONFIDENTIAL.” If only a portion or portions of the information warrants
23 protection, the Producing Party, to the extent practicable, shall identify the protected
24 portion(s).

25 (c) where discovery material described in (a) or (b) above has previously been
26 produced, the Designating Party shall make such designation by written notice to all
27 Parties that the document(s) should be treated as “CONFIDENTIAL” by identifying the
28 Disclosures or Discovery Material to be designated with particularity (i.e., by

1 production numbers where available). Upon notice of the designation, all Parties (i)
2 shall make no further disclosure of the Protected Material, except as provided by this
3 Protective Order; and (ii) if such Protected Material has already been disclosed to any
4 person or in any circumstance not authorized under this Protective Order, shall
5 immediately inform the person or persons to whom unauthorized disclosures were made
6 of all the terms of this Protective Order.

7 (d) for testimony given in depositions, ~~hearings, or other proceedings~~, that the
8 Designating Party identify the Disclosure or Discovery Material on the record, before
9 the close of the proceeding. Any Party also may designate testimony that is entitled to
10 protection by notifying all Parties in writing within thirty (30) days of receipt of the
11 transcript, of the specific pages and lines of the transcript which should be treated as
12 “CONFIDENTIAL” thereafter.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive the
15 Designating Party’s right to secure protection under this Order for such material. Upon
16 timely correction of a designation, the Receiving Party must make reasonable efforts to
17 assure that the material is treated in accordance with the provisions of this Order.

18 19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court’s Scheduling
22 Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37.1 *et seq.*

25 6.3 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
27 to harass or impose unnecessary expenses and burdens on other parties) may expose the
28 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn

the confidentiality designation, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party and the Receiving Party's Counsel in this Action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff;

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(g) during their depositions, witnesses and attorneys for witnesses in the Action to whom disclosure is reasonably necessary provided the deponent agrees on the record to keep the information confidential or unless otherwise agreed by the Designating Party or ordered by the court: Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(h) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The

Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), this Stipulated Protective Order, once signed by the Court, shall constitute an order that the privilege or protection as to an inadvertently produced document is not waived by disclosure connected with the litigation pending before the court and the disclosure is also not a waiver in any other federal or state proceeding.

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1 **11. MISCELLANEOUS**

2 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 11.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order, no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 11.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the specific
12 Protected Material at issue. If a Party's request to file Protected Material under seal is
13 denied by the court for a reason other than failure to comply with Civil Local Rule 79-
14 5, then the Receiving Party may file the information in the public record unless
15 otherwise instructed by the court.
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17 **12. FINAL DISPOSITION**

18 After the final disposition of this Action, as defined in paragraph 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must opt to
20 return all Protected Material to the Producing Party or destroy such material. As used
21 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
24 must submit a written certification to the Producing Party (and, if not the same person
25 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
26 category, where appropriate) all the Protected Material that was returned or destroyed,
27 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

1 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
2 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, discovery, deposition and trial exhibits, expert
4 reports, and consultant and expert work product, even if such materials contain
5 Protected Material. Any such archival copies that contain or constitute Protected
6 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

7 Any violation of this Order may be punished by any and all appropriate measures
8 including, without limitation, contempt proceedings and/or monetary sanctions.
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10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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12 DATED: November 15, 2019

13 /S/ FREDERICK F. MUMM
14 Honorable Frederick F. Mumm
15 United States District/Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Central District of California on
_____[date] in the case of *Patrick Bickham v. Vulcan Materials Company, et*
al., Case No. 2:19-cv-00981-AB (FFMx). I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____